

**THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Eastern Division**

Gerald A. Berry,)
Plaintiff,)
vs.)
John E. Potter, Postmaster General of) Case No. 07C6282
the United States Postal Service and) Judge Der-Yeghiayan
American Postal Workers Union and American)
Postal Workers Union Local 7011,)
Defendants.)

)

DECLARATION OF CARLA MCNEILL

I, Carla McNeill, make the following statements in lieu of an affidavit as permitted by 28 U.S.C. § 1746. I am aware that this declaration is the legal equivalent of a statement made under oath and that it will be filed with the United States District Court for the Northern District of Illinois.

1. I am an associate at the law firm of O'Donnell, Schwartz & Anderson, P.C. located at 1300 L Street, N.W., Suite 1200, Washington, DC 20005.
2. The documents attached as Exhibits 2, 3, and 4 are true and accurate copies of public records from the National Labor Relations Board.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed on May 17, 2008.


Carla McNeill

EXHIBIT

1

Jany 17
Case 107-cv-06282 Document 38-2
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST LABOR ORGANIZATIONS
OR ITS AGENTS

DRAFT 9/06 FORM EXEMPT (INITIALS) R-4417 S.C. 2006
DO NOT WRITE IN THIS SPACE
Case Filed Date Filed
10/27/06

INSTRUCTIONS: File an original together with four copies and a copy for each additional charged party named in item 1 with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT

a. Name APWU, Local 7011 (O'Hare)	b. Union Representative to contact Virgill Fleming
c. Telephone No. (773)894-1399	d. Address (Street, city, state, and ZIP code) 11600 West Irving Park Road Chicago
Fax No. () -	IL 60666

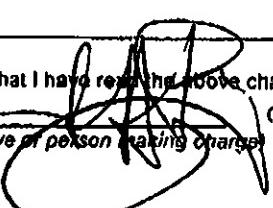
e. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) (1)(A) of the National Labor Relations Act. and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)

Within the last 6 months, the Union has failed to represent the Charging Party in his removal and termination from USPS for arbitrary and capricious reasons.

3. Name of Employer USPS	4. Telephone No (773)894-1401	
Fax No. () -		
5. Location of plant involved (street, city, state and ZIP code) 11600 West Irving Park Road Chicago	II. 60666	
6. Employer representative to contact Ruby Branch		
7. Type of establishment (factory, mine, wholesaler, etc.) service	8. Identify principal product or service mail	9. Number of workers employed 200
10. Full name of party filing charge Gerald Berry		
11. Address of party filing charge (street, city, state and ZIP code.) 1906 S. Ridgeland Avenue Berwyn, IL	12. Telephone No. (708)749-8950	
	Fax No () -	

13. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief
By 
(Signature of representative or person making charge) Gerald Berry An Individual
(Print/type name and title or office, if any)

(Fax) () -

(Telephone No.) () -

10/27/06

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 13-2006-2465)

EXHIBIT

2



United States Government
NATIONAL LABOR RELATIONS BOARD
Region 13
209 South LaSalle Street - 9th Floor
Chicago, Illinois 60604
Telephone (312) 353-7570 Fax (312) 886-1341

December 8, 2006

Mr. Gerald Berry
 1906 S. Ridgeland Avenue
 Berwyn, IL 60402

Re APWU, Local 7011 (O'Hare) (USPS)
 Case 13-CB-18523

Dear Mr. Berry:

The Region has carefully investigated and considered your charge against APWU, Local 7011 (O'Hare) alleging violations under Section 8 of the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have concluded that further proceedings are not warranted, and I am dismissing your charge for the following reasons: You have alleged that the Union violated the Act by refusing to process your termination grievance as far as you desire or to achieve the results you desired was for unfair, arbitrary or discriminatory reasons. However the evidence is insufficient to prove that the Union's actions in pursing your grievance were done for unlawful reasons.

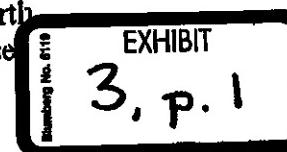
Your Right to Appeal: The National Labor Relations Board Rules and Regulations permit you to obtain a review of this action by filing an appeal with the GENERAL COUNSEL of the National Labor Relations Board. Use of the Appeal Form (Form NLRB-4767) will satisfy this requirement. However, you are encouraged to submit a complete statement setting forth the facts and reasons why you believe that the decision to dismiss your charge was incorrect.

The appeal may be filed by regular mail addressed to the General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1099 14th Street, N.W., Washington D.C. 20570-0001. A copy of the appeal should also be mailed to the Regional Director.

An appeal also may be filed electronically by using the e-filing system on the Agency's Website. In order to file an appeal electronically, please go to the Agency's Website at www.nlrb.gov, under "E-GOV." Select "E-filing" and then click on "File an Appeal or Other Document" under the heading "General Counsel's Office of Appeals." The Website will contain detailed instructions on how to file an appeal electronically.

The appeal MAY NOT be filed by facsimile transmission.

Appeal Due Date: The appeal must be received by the General Counsel in Washington D. C. by the close of business at 5:00 p.m. (ET) on December 22, 2006. If you mail the appeal, it will be considered timely filed if it is postmarked no later than one day before the due date set forth above. If you file the appeal electronically, it also must be received by the General Counsel.



the close of business at 5:00 p.m. (ET) on December 22, 2006. Failure to timely file an appeal electronically will not be excused on the basis of a claim that transmission could not be accomplished because the receiving machine was off-line or unavailable, the sending machine malfunctioned, or for any other electronic-related reason.

Extension of Time to File Appeal: Upon good cause shown, the General Counsel, may grant you an extension of time to file the appeal. You may file a request for an extension of time to file by mail, facsimile transmission, or through the Internet. The fax number is (202) 273-4283. Special instructions for requesting an extension of time over the Internet are set forth in the attached Access Code Certificate. While an appeal will be accepted as timely filed if it is postmarked no later than one day prior to the appeal due date, this rule does not apply to requests for extension of time. A request for an extension of time to file an appeal must be received on or before the original appeal due date. A request that is postmarked prior to the appeal due date but received after the appeal due date will be rejected as untimely. Unless filed through the Internet, a copy of any request for extension of time should be sent to me.

Confidentiality/Privilege: Please be advised that we cannot accept any limitations on the use of any appeal statement or evidence in support thereof provided to the Agency. Thus, any claim of confidentiality or privilege cannot be honored, except as provided by the FOIA, 5 U.S.C. 552, and any appeal statement may be subject to discretionary disclosure to a party upon request during the processing of the appeal. In the event the appeal is sustained, any statement or material submitted may be subject to introduction as evidence at any hearing that may be held before an administrative law judge. Further, we are required by the Federal Records Act to keep copies of documents used in our case handling for some period of years after a case closes. Accordingly, we may be required by the FOIA to disclose such records upon request, absent some applicable exemption such as those that protect confidential source, commercial/financial information or personal privacy interests (e.g., FOIA Exemptions 4, 6, 7(C) and 7(D), 5 U.S.C. § 552(b)(4), (6), (7)(C), and 7(D)). Accordingly, we will not honor any requests to place limitations on our use of appeal statements or supporting evidence beyond those prescribed by the foregoing laws, regulations, and policies.

EXHIBIT

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Case 1:07-cv-06282 Document 38-2 Filed 05/18/2008 Page 5 of 7
Notice to Other Parties of Appeal: You should notify the other party(ies) to the case that an appeal has been filed. Therefore, at the time the appeal is mailed to the General Counsel, please complete the enclosed Appeal Form (NLRB-4767) and send one copy of the form to all parties whose names and addresses are set forth in this letter.

Very truly yours,

/s/Joseph A. Barker

Joseph A. Barker

Regional Director

Enclosure:

Appeal forms

cc: Ronald Meisburg, General Counsel

NLRB

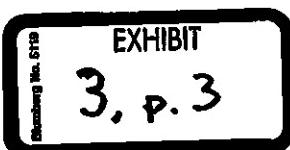
Washington, DC 20570

Virgil Fleming
APWU, Local 7011 (O'Hare)
11600 West Irving Park Road
Chicago, IL 60666

Ms. Shary N. Stone
American Postal Workers Union AFL-CIO
330 South Wells Street, Room 800
Chicago, IL 60606

Mr. Gregg R. Sackrider
Attn: Rosa Jones, Chief Field Counsel
United States Postal Service
222 South Riverside Plaza, Suite 1200
Chicago, IL 60606

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**UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570**

March 8, 2007

**Re: APWU, Local 7011 (O'Hare)
(United States Postal Service)
Case No. 13-CB-18523(P)**

**Mr. Gerald A. Berry
1906 South Ridgeland Avenue
Berwyn, IL 60402**

Dear Mr. Berry:

Your appeal from the Regional Director's refusal to issue complaint has been carefully considered.

The appeal is denied. The Regional Office investigation disclosed insufficient evidence to establish that the Union violated the National Labor Relations Act, as alleged. While a union owes employees a fair duty of representation with regard to disputes arising with an employer, it is afforded a wide range of reasonableness in carrying out this duty. Where, as here, a union undertakes to process a grievance, but decides to abandon the grievance short of arbitration, the finding of a violation turns not on the merit of the grievance, but rather on whether the union's disposition of the grievance was perfunctory or motivated by ill will or other invidious considerations. *Glass Bottle Blowers, Local 106 (Owen-Illinois)*, 240 NLRB 324 (1979). In the instant case, the evidence indicated that the Union processed your grievance through step two of the grievance procedure, but refused to process it to arbitration because of its good faith doubt as to the merits of the grievance, and not because of any unlawful considerations. Absent substantial evidence that the Union's actions were motivated by any animus or discriminatory considerations, a violation under the Act could not be established. Accordingly, further proceedings in this matter were deemed unwarranted.

Sincerely,

Ronald Meisburg
General Counsel

By _____

Yvonne T. Dixon
Yvonne T. Dixon, Director
Office of Appeals

EXHIBIT

4, p. 1

Case No. 13-CB-18523

-2

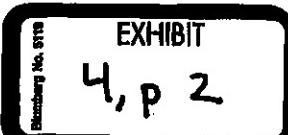
cc: Director, Region 13

Mr. Virgil Fleming
APWU, Local 7011 (O'Hare)
11600 West Irving Park Road
Chicago, IL 60666

Ms. Shary N. Stone
APWU, AFL-CIO
330 South Wells Street, Room 800
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tb



TOTAL P.13